

SLIP

TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
STAT 1.	SISS		
2.	1002 HQS		
3.			
4.			
5.			

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

- per our conversation -- attached are 2 piece STAT
 of paper on the subject of retroactive promotions.
 One could probably consider that administrative
 error took place in these cases which prevented a
 personnel action from taking effect as originally
 intended; also that the system we have of promoting
 supergrades at prescribed times could be considered
 a non-discretionary one (broadly, since even if
 the office intends, it only DCI can approve and he
 might not, right???) ! CD/PPM?

STAT I've could find no regulation time-in-grade
 requirement for SPS pay increases, confirmed that
 there were no DDS+T time requirements, SPS pay increases were
 considered separately each year without regard to time-in-grade, and
 the increases announced along with the supergrade promotions.

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
 clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

STAT

Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)

☒ SECRET

SUBJECT: (Optional)

STATM: [REDACTED] EXTENSION: [REDACTED] PERS 79-4471/a
DATE: 18 September 1979

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. AD OP/Personnel 5E-58, Hqs SEP 1979				Ben,
2. C/SPP - 21s call me 9/29				Retroactive promotions may be made in circumstances where clerical or administrative error resulted in the failure to carry out a nondiscretionary administrative regulation or policy. If a nondiscretionary personnel policy exists which provided that the computer specialist's promotions were to be effective on a specific date (as opposed to a date selected by the promotion panel) retroactive promotions may be granted.
3. [Signature]				
4. [Signature]				
5. [Signature]				
6. DD/Pers				DD/Pers: Since the DDO Panel which evaluated GS-09, GS-10 and GS-11 ADP personnel had neither: a) the correct understanding of the established effective date for promotion from GS-11 to GS-12; nor b) the authority to set a different date, it appears that Jim's note above will allow you to sign these actions. <div style="border: 1px solid black; width: 150px; height: 40px; margin: 10px auto;"></div>
7. [Signature]				
8. [Signature]				
9. [Signature]				
10. [Signature]				
11. [Signature]				
12. [Signature]				
13. [Signature]				
14. [Signature]				
15. [Signature]				

computer
promotions were
on a specific

Comp. Gen.] DECISIONS OF THE COMPTROLLER GENERAL

The data on the subject IRS employees is as follows:

Agent	Appointment Date	Promotion Action	Eligibility Effective Date
Aldinger, Evelyn E.	9/24/73	GS-7 to GS-9	9/29/74
Booth, Barbara J.	9/24/73	GS-7 to GS-9	9/29/74
Dittmann, Donald A.	9/24/73	GS-5 to GS-7	9/29/74
Harvel, Charles M.	9/24/73	GS-7 to GS-9	9/29/74
Wallins, Sanford H.	10/1/73	GS-7 to GS-9	10/13/74
Wiechec, Donald A.	10/9/73	GS-7 to GS-9	10/13/74
Zingaro, David J.	10/1/73	GS-5 to GS-7	10/13/74

Our decisions have generally held that personnel actions, including promotions, cannot be made retroactively effective unless clerical or administrative errors occurred that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulation, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. See 54 Comp. Gen. 263 (1974), and decisions cited therein; 52 *id.* 920 (1973); and 50 *id.* 850 (1971). We have also recognized that the above-stated exceptions to the general rule, prohibiting retroactively effective personnel actions, may constitute "unjustified or unwarranted personnel action[s]" under 5 U.S.C. § 5596 (1970), and consequently be remediable through the payment of backpay (B-180056, May 28, 1974, and 54 Comp. Gen. 312 (1974)).

Furthermore, our recent decisions considering the legality of implementing binding arbitration awards, which relate to Federal employees covered by collective-bargaining agreements, have held that the provisions of such agreements may constitute nondiscretionary agency policies if consistent with applicable laws and regulations, including Executive Order 11491, as amended. Therefore, when an arbitrator acting within proper authority and consistent with applicable laws and Comptroller General decisions, decides that an agency has violated an agreement, that such violation directly results in a loss of pay, and awards backpay to remedy that loss, the agency head can lawfully implement a backpay award for the period during which the employee would have received the pay but for the violation, so long as the relevant provision is properly includable in the agreement. See 54 Comp. Gen. 312 (1974); 54 *id.* 435 (1974); 54 *id.* 888 (1975). Similarly, an agency head on his own initiative, without waiting for the matter to come before an arbitrator, may conclude that the agreement has been violated and institute the same remedy.

July 75
79

[redacted];

[redacted] would
like to set up a mtg
re attached [redacted] &
Mr. Fitzwater.

11:30 A.M.
21 Feb 1980

[redacted]

STAT

STAT

STAT

STAT

Date

ROUTING AND TRANSMITTAL SLIP

2/14/80

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. EA/OPPPM

114 FEB 1980

2. 14 FEB 1980

3. DD/OPPPM

STAT 4. *See my meeting* - *D. Kent*

5. D/OPPPM

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REMARKS



*Recommends you
approve these retroactive
pay increases*

STAT

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clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

C/SIS/SS

Phone No.